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Supreme Court of the United States

OCTOBER TERM, 1932.

No. 513.

GEORGE WEEMS WILLIAMS, RECEIVER OF THE WASHINGTON, BALTIMORE AND ANNAPOLIS ELECTRIC RAILROAD COMPANY,

Petitioner,

vs.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondent.

No. 514.

GEORGE WEEMS WILLIAMS, RECEIVER OF THE WASHINGTON, BALTIMORE AND ANNAPOLIS ELECTRIC RAILROAD COMPANY,

Petitioner,

vs.

MAYOR, COUNSELOR AND ALDERMEN OF THE CITY OF ANNAPOLIS,

Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR PETITIONER.

GEORGE WEEMS WILLIAMS,
WILLIAM L. RAWLS,
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Counsel for Petitioners.

The Daily Record Co. Print, Baltimore.

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BRIEF FOR PETITIONER.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fourth Circuit was rendered on October 3, 1932, and is

reported at 61 F. (2d) 374. It is also printed at pp. 20-37 of the record.*

The opinion of the District Court for the District of Maryland (WILLIAM C. COLEMAN, J.) was rendered on May 16, 1932, and has not been officially reported. It is printed at pp. 12-16 of the record.

II.

JURISDICTION.

The case is here on writ of certiorari granted by this Court on December 5, 1932 (R. 38), pursuant to the express provisions of Section 240 (a) of the Judicial Code [U. S. C. Tit. 28, Sec. 347 (a), Acts, Feb. 13, 1925, c. 229, sec. 1, 43 Stat. at L. 938].

While the right of the respondent municipal corporations of the State of Maryland to invoke the protection of the Fourteenth Amendment against the legislative enactments of that State is hereinafter challenged, the jurisdiction of this Court remains unaffected as these cases originated in claims against properties in the hands of a receiver appointed by the United States District Court for the District of Maryland. *In re Tyler,* 149 U. S. 164. The scope of the writ heretofore granted by this Court unquestionably extends to all questions involved in the proceedings, the petitioner having sought the writ on the express ground that an appeal under Sec. 240 (b) of the Judicial Code would not confer upon this Court jurisdiction to pass upon the questions of state law involved. (See petition for writ of certiorari, pp. 2, 13-14).

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* References are to the record in No. 513, which is virtually identical in substance with that in No. 514, but differs slightly as to paging.

III.

STATEMENT OF THE CASE.

On January 27, 1931, petitioner was appointed receiver for the Washington, Baltimore and Annapolis Electric Railroad Company by the United States District Court for the District of Maryland. At the time of his appointment the funded debt of the Railroad amounted to $9,292,500 and the unsecured indebtedness amounted to $956,256.64 (R. 8). For ten years prior to the appointment of the receiver, etc., there had been a continuous decline in the revenues of the Railroad until in the year 1930 the statements showed an operating deficit of $163,219.81, exclusive of taxes and fixed charges (R. 9).

Obviously it was impossible to continue to operate a railroad which not only was not paying its fixed charges, but had a large deficit in its actual operating expenses. The Railroad would in a short time have been without funds with which to pay for services and supplies essential to its continued operation, and it would have been impossible to attempt to raise funds by the sale of physical assets. On the other hand, cessation of operation would work a serious inconvenience to many thousands of people, as 3,247,534 passengers were carried over the road in the year 1930 (R. 9), and the Railroad furnishes the only rail service to the City of Annapolis, the capital of the State of Maryland, where all of the government offices are located. Manifestly, therefore, the preservation of the service furnished by the Railroad was of peculiar importance to the people of the entire State, as well as the people of the cities and counties traversed by its lines.

In an effort to continue operation and provide transportation to the public served by the Railroad, your petitioner, promptly after his appointment as receiver, submitted to the General Assembly of Maryland, which was then in session, a bill which was subsequently passed, and is now known as Chapter 497 of the Acts of 1931 (R. 5), which reads as follows:

> "AN ACT to exempt the railroad property of the Washington, Baltimore and Annapolis Electric Railroad Company, or so much thereof as may be used for railroad purposes by said company, its receiver, successors and assigns, from all State taxes and charges, including contributions to the cost of construction of railroad crossings made or to be made under the authority of the State Roads Commission, and from all county and city taxes and charges in the nature of a tax for the years during which the property is so used, but not exceeding two years beginning January 1, 1931.
>
> WHEREAS, The Washington, Baltimore and Annapolis Electric Railroad Company did not in the year 1930 earn its operating charges, and it is of the utmost importance for the welfare of the State and particularly the communities served by said railroad, that the operation of said railroad be continued, and
>
> WHEREAS, It is in the judgment of the General Assembly of Maryland a wise and sound public policy to encourage the continued operation of said railroad by the exemption herein provided:
>
> SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the railroad property of the Washington, Baltimore and Annapolis Electric Railroad Company, or so much thereof as may be used for railroad purposes by said company, its receiver, successors and assigns, be exempt from all State taxes and charges, including contributions to the cost of construction of railroad crossings made or to be made under the authority of the State Roads Com-

mission, and from all county and city taxes and charges in the nature of a tax for the years during which the property is so used, but not exceeding two years beginning January 1, 1931.

SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1931."

Notwithstanding this Act of the General Assembly of Maryland, the Mayor and City Council of Baltimore and the Mayor, Counselor and Aldermen of the City of Annapolis, both municipal corporations of the State of Maryland, filed their petitions in the receivership proceedings claiming taxes alleged to be due their respective municipalities by the Railroad.

The claim of the City of Baltimore involved approximately $50,000 (R. 22), and included real property taxes on the Railroad's terminal properties and rights of way, personal property taxes on the Railroad's cars, and franchise taxes alleged to have accrued under Ordinance 123 of the Mayor and City Council of Baltimore, approved April 27, 1906 (R. 2-6). The claim of the City of Annapolis involved approximately $3,000 (R. 22), and included taxes on real property and franchise taxes, alleged to have accrued under ordinances of the Mayor, Counselor and Aldermen of the City of Annapolis, approved July 1, 1907, and June 8, 1914 (Record No. 514, 1-6). These taxes were alleged to have accrued during the year 1931 and during the first quarter of the year 1932.

The claims of the municipalities were denied by the District Court in an opinion sustaining the validity of Chapter 497 of the Acts of 1931 (R. 12-16). Upon appeal the Circuit Court of Appeals for the Fourth Circuit reversed the judgment of the District Court and held the act in question invalid (R. 21-37). 61 F. (2d) 374-382.

In support of its conclusion the Circuit Court of Appeals asserted that the Act violates the Fourteenth Amendment to the Federal Constitution, the uniformity provision of Article 15 of the Declaration of Rights of the State of Maryland, and the provisions of Article III, Sec. 33 of the Constitution of the State of Maryland, which prohibit the Legislature from passing a special law for any case for which provision has been made by an existing general law. Reference was also made to the provision in the same section prohibiting the passage of local or special laws releasing persons from their debts or obligations to the State unless recommended by the Governor or officers of the Treasury Department. The court further held that the Act, properly construed, does not exempt the Railroad from payment of franchise taxes due to the respondent municipal corporations under the terms of the ordinances heretofore referred to, and intimated that if the Act were otherwise construed, it would be invalid under Article III, Sec. 29 of the Constitution of the State of Maryland (which requires that a law enacted by the Legislature shall embrace but one subject), and would violate "the spirit, if not the letter" of Article XI-A of the Maryland Constitution, commonly known as the Home Rule Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Fourteenth Amendment to the Constitution of the United States provides:

> "Sec. 1. * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

Art. 15 of the Declaration of Rights of the State of Maryland provides:

"Art. 15. That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the Government; that the General Assembly shall, by uniform rules, provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respecting taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community."

Art. III, Sec. 29 of the Constitution of Maryland provides:

"* * * and every law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title."

Art. III, Sec. 33 of the Constitution of Maryland provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, viz: For * * * releasing persons from their debts or obligations to the State, unless recommended by the Governor or officers of the Treasury Department. And the General Assembly shall pass no special law for any case for which provision has been made by an existing general law."

Article XI-A of the Constitution of Maryland provides:

> "Sec. 4. From and after the adoption of a charter under the provisions of this Article by the City of Baltimore or any County of this State, no public local law shall be enacted by the General Assembly for said City or County on any subject covered by express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term 'geographical sub-division' herein used shall be taken to mean the City of Baltimore or any of the Counties of this State."

MUNICIPAL ORDINANCES.

Ordinance 123 of the Mayor and City Council of Baltimore, approved April 27, 1906, provides as follows:

> "Sec. 13. And be it further ordained, That in consideration of the several rights, privileges and franchises herein granted to the Baltimore Terminal Company, the Washington, Baltimore and Annapolis Electric Railway Company and the Baltimore and Annapolis Short Line Railroad Company, each of said grantees, their successors or assigns, hereby agrees to pay and shall pay to the Mayor and City Council of Baltimore in quarterly instalments, on the first days of January, April, July and October of each and every year a tax of four and one-half mills for every passenger above the age of twelve years, and of two and seven-tenths mills for every passenger between the ages of four and twelve years, carried by it, respectively, over the tracks hereby authorized, or any part thereof, for a whole or part trip within the present limits of the City of Baltimore, or as the same may be hereafter extended from time to time, and without regard to the fact that their lines of railway, or any part thereof, are or may be situated upon private rights of way instead of city streets, and also without regard to the fact whether such passenger has boarded the car within

or without the city limits, as the same now exist or may be hereafter extended from time to time; and each of the said grantees also agrees to pay and shall also pay to the said Mayor and City Council of Baltimore in quarterly instalments, on the first days of January, April, July and October of each and every year, a tax of one per cent upon their respective gross receipts derived from mail, baggage, express matter, milk, truck and light freight carried by it, respectively, over any of their respective lines from or to any point on the tracks hereby authorized within the present limits of the City of Baltimore, or as the same may be hereafter extended from time to time, without regard to the place of origin or destination of said mail, baggage, express matter, milk, truck and light freight, and the Baltimore Terminal Company shall also pay to the Mayor and City Council of Baltimore the sum of five hundred dollars, said sum to be paid to the Mayor and City Council of Baltimore upon commencement of work by it under this ordinance."

"Sec. 14. And be it further ordained, That upon the failure of the said grantees, or any of them, their successors or assigns, to comply with any of the terms or conditions of this ordinance, the rights, privileges and franchises hereby granted shall be and become wholly null and void."

"Sec. 15. And be it further ordained, That neither the passage of this ordinance, nor anything contained herein, especially the provision herein for compensation to the city, shall be taken as in any wise prejudicing the pending contention of the city with reference to the assessability and taxability of street franchises or easements."

The Ordinance of the Mayor, Counselor and Aldermen of the City of Annapolis, approved July 1, 1907, provides as follows:

"Sec. 9. And be it established and ordained by the authority aforesaid, That the franchise granted

by this ordinance is hereby granted upon condition that said Railway Company shall give a city passenger railway service over said tracks in modern cars propelled by electricity or other improved motive power, other than steam, to passengers desiring to travel over the same, said cars to be run at not less than fifteen minutes intervals, between 7 a. m. and 7 p. m., and shall not at any time charge more than five cents per passenger, children under 12 years of age three cents per passenger, for one continuous ride over any part of said route as set forth in this Ordinance and that said Company shall at all times submit to all proper ordinances relating to the use of said streets by said Company passed by the Mayor, Counselor and Aldermen of the City of Annapolis and for the protection of persons traveling upon the said streets or within the cars of said Company."

"Sec. 14. And be it further established and ordained, That in consideration of the several rights, privileges and franchises herein granted, the Washington, Baltimore and Annapolis Electric Railway Company, its successors or assigns, hereby agrees to pay and shall pay to the Mayor, Counselor and Aldermen of Annapolis, in quarterly instalments on the first days of January, April, July and October of each and every year a tax of four and one-half mills for every passenger above the age of twelve years and of two and seven-tenths mills for every passenger between the ages of four and twelve years, carried by it respectively, over the tracks within the limits of the City of Annapolis, or any part thereof, for a whole or part trips with..... the present limits of the City of Annapolis, or as the same may be thereafter extended from time to time, and without regard to the fact that their lines of railway, or any part thereof, are or may be situated upon private rights of way instead of city streets, and also without regard to the fact whether such passenger has boarded the car within or without the city limits, as the same now exist or may hereafter — extended

from time to time. Provided, further, the revenue under this ordinance shall not be less than $500.00 per year."

The Ordinance of the Mayor, Counselor and Aldermen of the City of Annapolis, approved June 8, 1914, provides as follows:

"Sect. 1. Now, therefore be it established and ordained by the Mayor, Counselor and Aldermen of the City of Annapolis, that the Washington, Baltimore and Annapolis Electric Railroad be and it is hereby authorized and permitted to discontinue the City Passenger Railway service furnished by the car of City Type heretofore operated by it until thirty days after the receipt by said Railroad Company of a notice from the said Mayor, Counselor and Aldermen of the City of Annapolis to resume the operation of said car of the City type; provided it is understood that the granting of said request shall not in any way affect the respective rights, obligations and duties of the said Railroad Company, and the said Mayor, Counselor and Aldermen of the City of Annapolis, as set forth in the Ordinance granting said franchises to the predecessor of the Railroad Company, and provided further that the sum of $100.00 per year be paid by the Railroad Company to the Mayor, Counselor and Aldermen of the City of Annapolis, in lieu of the gross receipt tax heretofore received by said municipal corporation from the railroad corporation on the gross receipts of said City car."

"Sect. 2. And be it established and ordained by the authority aforesaid that this ordinance shall go into effect immediately upon the acceptance of the same in writing by the proper officers of the said Railroad Company."

IV.

SPECIFICATIONS OF ERRORS.

1. The Circuit Court of Appeals erred in holding that the respondent municipal corporations were authorized to invoke the provisions of the Fourteenth Amendment against the alleged discriminatory acts of their creator, especially as the municipal corporations are not the objects of the alleged discrimination.

2. The Circuit Court of Appeals erred in holding that Chapter 497 of the Acts of 1931 was passed in violation of the Fourteenth Amendment.

3. The Circuit Court of Appeals erred in holding that the Act was passed in violation of Article 15 of the Declaration of Rights of the State of Maryland.

4. The Circuit Court of Appeals erred in holding that the Act was passed in violation of Article III, Sec. 33 of the Constitution of the State of Maryland.

5. The Circuit Court of Appeals erred in holding that the Act did not relieve the Railroad from the obligation to pay franchise taxes accruing under ordinances of the respondent municipal corporations, and further erred in intimating that the Act otherwise construed would violate the provisions of Article III, Sec. 29 and of Article XIA of the Maryland Constitution.

V.

ARGUMENT.

SUMMARY.

A. The respondent municipalities cannot invoke the Fourteenth Amendment.

B. The Act does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment, nor does it lack uniformity within the meaning of the Declaration of Rights of the State of Maryland.

C. The Act is not a special law for a case for which provision has been made by an existing general law of the State of Maryland, nor does it release the Railroad from any debt or obligation to the State within the meaning of Article III, Sec. 33 of the Maryland Constitution.

D. The Act exempts the Railroad from payment of franchise taxes to the respondent municipalities, and so construed is not a law embracing more than one subject within the meaning of Article III, Sec. 29 nor a local law within the meaning of Article XIA of the Maryland Constitution.

A.

THE RESPONDENT MUNICIPALITIES CANNOT INVOKE THE FOURTEENTH AMENDMENT.

In the courts below it was assumed that the cities of Baltimore and Annapolis might properly challenge the constitutional validity of the Act of 1931 on the ground that its provisions worked a discrimination contrary to the Fourteenth Amendment. It is to be observed that the municipalities claim the right to appear in two capacities, as asserting proprietary rights against their creator, and as representatives of the taxpaying public. It is submitted that in neither capacity may they be heard to invoke the Fourteenth Amendment.

In so far as the municipalities may seek to appear as proprietors, their rights must flow from the supposed

contract created by the municipal ordinances which have been referred to. If it be assumed that these ordinances were passed by the municipalities in the exercise of proprietary rights, nevertheless, under the clear decisions of this Court, the State may abrogate the provisions of the ordinances and release the railroad from the payment of the charges therein prescribed.

In *Trenton v. State of New Jersey*, 262 U. S. 182, a writ of error was dismissed upon the ground that no substantial federal question was presented by the contention of a municipal corporation of New Jersey that a statute of that State operated to deprive the municipality of due process of law. The argument of the municipality was based on the fact that the challenged statute interfered with proprietary rights of the municipality, but this Court, speaking through Mr. Justice BUTLER, after pointing out the distinction between the governmental and proprietary functions of a municipal corporation, said (p. 192):

> "But such distinction furnishes no ground for the application of constitutional restraints here sought to be invoked by the City of Trenton against the State of New Jersey. They do not apply as against the State in favor of its own municipalities. We hold that the City cannot invoke these provisions of the Federal Constitution against the imposition of the license fee or charge for diversion of water specified in the State law here in question."

In *Newark v. New Jersey*, 262 U. S. 192, the same ruling was applied to a case in which the municipality invoked the equal protections clause of the Fourteenth Amendment, and more recently in *Railroad Commission v. Los Angeles Railroad Corporation*, 280 U. S. 145, 156,

the power of the State to abrogate franchise contracts entered into between a municipal corporation of the State and a railroad corporation was conclusively determined. See also *Risty v. Chicago R. I. and Pac. Ry. Co.*, 270 U. S. 378, 390.

If the municipalities seek to invoke the provisions of the Fourteenth Amendment on behalf of other taxpayers they are met with the equally well settled doctrine that the protection of the Fourteenth Amendment against State action is only for the benefit of those who are injured through the invasions of personal or property rights, or through the discriminations which the amendment forbids. In *Columbus & Greenv. Ry. v. Miller*, 283 U. S. 96 the State Tax Collector of Mississippi sued the Railway Company to collect a tax which had been abrogated by an act of the Mississippi Legislature. The collector claimed that the repealing act was unconstitutional and void because arbitrary and unreasonable, and therefore in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution, and the Supreme Court of Mississippi so held. On appeal this Court, speaking through Mr. Chief Justice HUGHES, said (p. 99):

> "While, so far as State practice is concerned, the authority of a public officer to assail in the courts of the State the constitutional validity of a State statute is a local question, this fact does not alter the fundamental principle governing the determination of the Federal question by this Court, that the protection of the Fourteenth Amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the Amendment forbids. The constitutional guaranty

> does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."

This case, and the authorities cited by the Chief Justice, seem to furnish a conclusive demonstration that the respondent municipalities may not invoke the protection of the Fourteenth Amendment on behalf of other taxpayers.

B.

THE ACT DOES NOT DENY THE EQUAL PROTECTION OF THE LAWS WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT, NOR DOES IT LACK UNIFORMITY WITHIN THE MEANING OF THE DECLARATION OF RIGHTS OF THE STATE OF MARYLAND.

The Circuit Court of Appeals argues that the Act of 1931 contravenes the Fourteenth Amendment in that it selects a single taxpayer and exempts his property from taxation. For the same reason it argues that the Act contravenes the uniformity provisions of Art. 15 of the Declaration of Rights of Maryland. The basis of each contention must be that the Act discriminates against other taxpayers similarly situated. The contentions are, therefore, so closely related as to preclude separate discussion.

In the Maryland Declaration of Rights adopted in 1776, appeared the following:

> "Art. 15. That the levying of taxes by the poll is grievous and oppressive, and ought to be prohibited; that paupers ought not to be assessed for the support of the government; but every person in the State or person holding property therein ought to contribute his proportion of public taxes for the sup-

port of the government according to his actual worth in real or personal property; yet fines, duties, or taxes must properly and justly be imposed, or laid with a political view of the good government and benefit of the community."

This provision stood unchanged until the adoption of Chapter 390 of the Acts of 1914, ratified by the people on November 2nd, 1915, which amended the article to its present form (see p. 6 of this brief). Neither petitioner nor the respondents assert that the change is significant for the purposes of the case at hand. *Susquehanna Power Co. v. Tax Commission*, 159 Md. 334, 343.

That nothing in the quoted provision abrogates the power of the General Assembly to select the objects of taxation is well settled. In *Daly v. Morgan*, 69 Md. 460, 467, 16 Atl. 287 [1888], the Court of Appeals of Maryland said (italics ours):

> "And it is insisted that all property within the limits of a city, without regard to its location, or condition, whether improved or unimproved, must, under the Constitution of this State, be subject to the same rate of taxation for city purposes. And in support of this contention, the appellant relies upon Art. 15 of the Declaration of Rights, which says, 'that every person in the State, or persons holding property therein, ought to contribute his proportion of public taxes for the support of the government according to his actual worth in real or personal property.' Now it can hardly be necessary to say that this Article in the Declaration of Rights is to be found word for word in every Constitution adopted in this State. We shall not stop to consider the many cases in which it has been the subject of construction by this court, nor the conflict of opinion as to the precise limitation thereby imposed on the taxing power of the State. Whatever may be the diver-

> sity of opinion in this respect, all agree that the contribution of every one, of his proportion of public taxes levied for the support of the government, according to the value of his property, necessarily implies equality of taxation on all taxable property. We say taxable property, for although the abstract declaration in the Bill of Rights may be said to subject all property to taxation, yet it has always been held, that the Legislature *may exempt from taxation such property as in its judgment a sound policy may require.*"

That this power may validly be exercised by the General Assembly of Maryland in such manner as to exempt the property of a specific taxpayer has been settled since the year 1841 when *The Tax Cases,* 12 G. & J. 117, were decided. There the Court of Appeals of Maryland held that the State had contracted to exempt the franchises of certain banks, but that the exemption properly construed did not extend to real and personal property. On writ of error this Court refused to accept the narrow construction placed by the Court of Appeals on the exempting statute and overthrew a subsequent enactment of the General Assembly of Maryland which had attempted to tax the banks' real and personal property. *Gordon v. Appeal Tax Court,* 3 How. 133.

That case placed the seal of judicial approval on a policy pursued by the State of Maryland from the early years of the nineteenth century, of granting such exemptions for the purpose of encouraging the development of transportation facilities. Such an exemption was embodied in the original charter of the Baltimore and Ohio Railroad Company. Laws of Maryland, 1826, ch. 126, sec. 18. See *Mayor & City Council of Baltimore v. B. & O. R. R. Co.,* 6 Gill, 288 [1848]; *State v. B. & O. R. R. Co.,*

48 Md. 49 [1878]; *State v. B. & O. R. R. Co.*, 127 Md. 434, 96 Atl. 636 [1916]. Other illustrations of the unquestioned exercise of this power may be found in: *The Tax Cases, supra; Phil., W. & B. R. R. Co. v. Bayless*, 2 Gill 355 [1844]; *Gordon v. M. & C. C. of Balto.*, 5 Gill 231 [1847]; *State v. Northern Central R. R. Co.*, 44 Md. 131 [1876]; *State v. P. W. & B. R. R. Co.*, 45 Md. 361 [1876]; *B. C. & A. Ry. Co. v. Ocean City*, 89 Md. 89, 42 Atl. 922 [1899]; *State v. Northern Central R. R. Co.*, 90 Md. 447, 45 Atl. 465 [1900]; *B. C. & A. Ry. Co. v. Wicomico Co.*, 93 Md. 113, 48 Atl. 853 [1901]; *Havre de Grace v. Bridge Co.*, 145 Md. 491, 125 Atl. 704. Compare *Appeal Tax Court v. G. L. of M.*, 50 Md. 421 [1879]; *Appeal Tax Court v. Balto. Cemetery Co.*, 50 Md. 432 [1879]; *Appeal Tax Court v. Acad. of Visitation*, 50 Md. 437 [1879]; *Appeal Tax Court v. University of Maryland*, 50 Md. 457 [1879].

In *State v. N. C. R. R. Co.*, 44 Md. 131, 170, ALVEY, J., who dissented from the opinion of the court on other grounds, said:

> "If the question here involved were now for the first time presented for determination, I should have no hesitation in declaring that it is not within the power of the Legislature so to alienate the sovereign right of taxation as to bind and conclude succeeding Legislatures, and that any contract to that effect would be void. * * * Especially should I so declare, in view of the 15th Article of the Bill of Rights of this State, in force since 1776, which declares that 'every person in the State, or person holding property therein, ought to contribute his proportion of public taxes for the support of the Government, according to his actual worth in real or personal property.' This is a mandatory rule, and should never have been disregarded. It should, as I think, have been accepted as a constitutional restriction upon the Legislature against granting exemptions or immuni-

> ties from taxation in favor of some to the prejudice of the rest of the community. But, unfortunately, the long established practice, and the repeated decisions of our predecessors, have so far fixed the construction, and established the right in the Legislature, to grant exemptions from taxation, that it cannot now be approached as a question open for discussion. We must therefore take the law as we find it settled, and apply it to cases as they arise, without regard to what our opinions would be if not controlled by authority."

In that case the majority of the court held that an exemption from taxation originally conferred upon the Baltimore & Susquehanna R. R. Co. by the Act of 1827, ch. 72, had passed by virtue of the Act of 1854, ch. 250, to the Northern Central Railroad Company, but that this exemption was subject to the provisions of the Constitution of 1850, and hence revocable. Pending an appeal to this Court, the General Assembly of Maryland passed the Act of 1880, ch. 16, described in its preamble as one to adjust and finally settle by agreement the pending tax controversies between the State and the railroad by making the latter thereafter liable to taxation to a certain extent, and providing for the payment of certain indebtedness claimed by the State from the Company. This Act was accepted by the railroad and acted upon until 1890, when by ch. 559 of the Acts of that year an attempt was made to increase the rate of taxation previously agreed upon. The railroad contested the new rate of taxation, claiming that the Act of 1880 constituted a binding contract, which could not be impaired. In *State v. Northern Central Railway Co.*, 90 Md. 447, the Court of Appeals rejected this contention and held that the Act of 1880 was also subject to repeal by reason of the provisions of the Constitution of 1867. The Court said (p. 472):

> "If the Act of 1880 had been passed prior to the adoption of the Constitution of 1850, we would, under the decisions of this Court in *Tax Cases*, 12 G. & J. 117; *The State v. The B. & O. R. R. Co.*, 48 Md. 71; *The State v. The Northern Central R. R. Co.*, 44 Md. at p. 162, and *The County Commissioners v. A. & E. R. R. Co.*, 47 Md. 611, and of the United States Supreme Court in *Miller v. The State*, 15 Wal. 448, and other cases, have been compelled to uphold its validity beyond the power of subsequent Legislatures to repeal or impair, even though its operation would be to tie the hands of all future Legislatures and practically alienate the sovereign right of taxation, but in view of the language already referred to, used by the Court in 44 Md., the privilege of partial immunity from taxation conferred on the appellee by the Act of 1880 must be held to have been subject to repeal by subsequent Legislatures."

On appeal this Court affirmed the judgment of the Court of Appeals of Maryland on the ground that the Act of 1880 was in effect an amendment to the charter of the Northern Central Railway Company, and hence clearly subject to repeal under the express provisions of the State constitution then in force. *Northern Central Railway Co. v. Md.*, 187 U. S. 258.

This Court has repeatedly held that there is nothing in the Federal Constitution to limit the exercise by the States of this power in suitable cases. In *Picard v. Tennessee etc. Railroad Co.*, 130 U. S. 637, 641, Mr. Justice FIELD said:

> "It has been held, and the doctrine has been so often repeated that it is no longer an open question, that the legislature of a State may exempt the property of particular persons or corporations from taxation, either for a limited period or perpetually; but to justify the conclusion that such exemption is

> granted, it must appear by language so clear and unmistakable as to leave no doubt of the purpose of legislature. The power of taxation is one of the highest attributes of sovereignty, and the suspension of its exercise as to any persons or property is not a matter to be presumed or inferred. It must be declared or it will not be deemed to exist. If the legislature can lay aside a power devolved upon it for the good of the whole people of the State, for the benefit of a private party, it must speak in such unmistakable terms that they will not admit of any reasonable construction consistent with the reservation of the power. *The Delaware Railroad Tax,* 18 Wall. 206, 225.
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> "Yielding to the doctrine that immunity from taxation may be granted, that point being already adjudged, it must be considered as a personal privilege not extending beyond the immediate grantee, unless otherwise so declared in express terms."

See also *N. J. v. Wilson,* 7 Cranch, 164; *Gordon v. Appeal Tax Court,* 3 How. 133; *Railroad Co. v. State,* 10 How. 376; *State Bank of Ohio v. Knoop,* 16 How. 369, 387; *Ohio Life Insurance & Trust Co. v. de Bolt,* 16 How. 416; *Dodge v. Woolsey,* 18 How. 331; *Home of the Friendless v. Rouse,* 8 Wall. 438; *Humphrey v. Pegues,* 16 Wall. 244, 249; *The Delaware Railroad Tax Cases,* 18 Wall. 206, 225. Compare *Northern Central R. R. Co. v. Maryland,* 187 U. S. 258; *Commissioners of Wicomico Co. v. Bancroft,* 203 U. S. 112.

It is true that in those cases the question presented was not as to the power of the State to exempt the property of a specific taxpayer, but rather as to whether the power had been so exercised as to create a contract between the State and the taxpayer which could not subsequently be impaired without violation of Article I, Sec-

tion 10 of the Constitution of the United States; but the validity of the exemption was necessarily assumed, else the power to revoke it could not have been questioned.

The respondents do not challenge the authority of these cases, but seek to distinguish them on the ground that they involve contracts between the State and the taxpayer. The argument involves alternative assumptions—(1) that the State may contract to grant an exemption in disregard of constitutional prohibitions; or (2) that the presence of legal consideration (in the technical sense of legal detriment), is vital to the validity of the exemption.

Neither of these assumptions can withstand analysis. It is perfectly clear that if the provisions of the State Constitution prohibit the legislature from exempting the property of a single taxpayer, an attempt to evade these provisions by contracting to do so for a legal consideration must fail. The power to contract presupposes the power to exempt. In *Stearns v. Minnesota,* 179 U. S. 223 at 254, Mr. Justice WHITE said:

> "It follows then that if the gross receipt tax was an exemption it was void, because repugnant to the Constitution of the State. If so void, it did not create a contract, within the contract clause of the Constitution of the United States for rights protected from impairment could not flow from an act which had no legal existence."

And in this statement, the entire Court appears to have concurred. See *Duluth etc. R. R. Co. v. St. Louis County,* 179 U. S. 302.

The alternative contention involves an admission that special circumstances do justify the granting of exemp-

tion to a single taxpayer, notwithstanding State and Federal constitutional provisions requiring uniformity of taxation, and the further admission that the existence of a contract based upon a legal consideration furnishes the peculiar justification necessary to support such an exemption. It cannot be conceded, however, that the mere existence of the elements of legal contract is alone sufficient to satisfy the requirement of uniformity. Otherwise, the State might validly agree to exempt the property of a single householder in consideration of the taxpayer undertaking not to tear down improvements thereon. Such a case would present all the elements of a legal contract, yet it cannot be supposed that the requirements of Federal and State Constitutions could be thus evaded.

It is patent that the existence of a legal obligation flowing from the taxpayer is irrelevant in determining the right of the Legislature to grant the exemption. The essential requirement is not the presence of legal consideration in the technical sense, but the presence of a *public benefit* justifying the discrimination involved in the selection of the particular taxpayer for exemption. Thus a water company which is supplying a municipality free of charge, may be exempted from taxation, as in *Louisville Water Co. v. Clark*, 143 U. S. 1, not because the elements of a binding legal contract are present, but because the peculiar public service rendered by the company justifies its selection as the object of special treatment.

The respondents argue that the Legislature has no power to grant "gratuities" to a taxpayer as both Federal and State Constitutions prohibit such acts of grace. They refer to numerous decisions of this Court and of

the Court of Appeals of Maryland in which tax exemptions are so characterized in the absence of the elements of a binding legal contract. See *Christ Church Hospital v. County of Philadelphia,* 24 How. 300; *Tomlinson v. Branch,* 15 Wall. 460; *Tucker v. Ferguson,* 22 Wall. 527; *West-Wis. R. R. Co. v. Supervisors,* 93 U. S. 595; *Hoge v. Richmond & Danville R. Co.,* 99 U. S. 348; *Appeal Tax Court v. Academy of Visitation,* 50 Md. 437. The confusion arises, however, from failure to bear in mind that these cases arose under Article I, Section 10, of the Federal Constitution. In none of them was the power of exemption denied. It was simply held that the exemption failed to create an irrevocable contract. The cases were distinguished from such cases as *Dartmouth College v. Woodward,* 4 Wheat. 518, and *Home of the Friendless v. Rouse,* 8 Wall. 430, where the grant was contained in the original act of incorporation and hence held to constitute a contract which could not be impaired. In those cases, the controlling question was whether a binding legal contract had been entered into between the State and the taxpayer. Insofar as they may be said to bear upon the question now at issue, they appear to support the power of the State to grant the exemption independently of contract, for unless the existence of that power had been assumed, the question of impairment would never have been reached.

The foregoing argument leads to the conclusion that the power of the Legislature to select the property of a single taxpayer for exemption depends upon the receipt of some peculiar public benefit sufficiently substantial to justify the discrimination. The determination of the existence of such a public advantage is in the first in-

stance for the Legislature, and its judgment will not be discarded by this Court unless pressed to a clearly arbitrary conclusion. Where the Legislature may reasonably suppose that the grant of a tax exemption will obtain or preserve for the people of the State an important service *not otherwise obtainable*, the resultant public benefit justifies the exemption.

It is important to observe that the Circuit Court of Appeals impliedly concedes this point. Thus Judge PARKER says, 61 F. (2d) 374, 378 (R. 28, 34) (italics ours):

> "It is said that the corporation is insolvent and the service which it renders is of importance to the public; but the exemption is not granted to other insolvent taxpayers or even to other insolvent railroads. So far as the public service rendered by the corporation is concerned, it should be remembered that *its property is dedicated to the public use and the mere fact of insolvency does not justify the abandonment of its operation.* Its property is still owned by someone (its real ownership is in bondholders and creditors) and is still used for railroad purposes; and the financial condition of the corporation holding the legal title furnishes no reasonable basis for exemption when property of others used for railroad purposes is taxed. If the property of all insolvents, or even of all insolvent railroads were exempted from taxation, a different question would be presented; but, as stated above, we have no attempt at classification but an arbitrary individual exemption.
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> (P. 381) "We think, however, that there is a manifest difference between the State's granting an exemption from taxation to persons who propose to organize a corporation which will presumably be of benefit to the public, as an inducement to capitalists to invest money in the enterprise (see Mayor etc. v. B. & O. R. R., 6 Gill [Md.] 288), and granting an exemption

to a corporation already organized and engaged in business. In the one case the State is waiving the right to tax *in consideration of securing a public benefit;* in the other it is granting an exemption *without consideration,* for, as pointed out above, the railroad having dedicated its property to a public use *is not entitled to discontinue the service because of its insolvency.*"

Thus we are brought to the fundamental propositions upon which the opinion below rests; that the Act of 1931 discriminates against other taxpayers *similarly situated,* and that it grants an exemption *without consideration,* for the reason that the Railroad is bound to continue operations, tax exemption or no tax exemption. Each of these propositions is essential to the conclusion reached by the Circuit Court of Appeals, and each of them, it is respectfully submitted, is manifestly unsound.

Considering first the alleged fact of discrimination against other taxpayers similarly situated, there is not a shred of evidence in the record to establish any such fact. As far as appears from an examination of the face of the Act or from the facts before this Court, there is no other railroad company in the State of Maryland which can properly be said to be similarly situated to that operated by the petitioner. Thus for all that appears there is no other insolvent railroad in the State of Maryland. Moreover, it is obvious that even proof of the existence of another insolvent railroad would not establish a discrimination. There are peculiar factors in the present situation such as the failure of the road to earn operating expenses, the extremely desperate condition of its finances, and the fact that this road furnishes the only rail service to the State capital.

Certainly this Court will not assume the existence of any such road in like plight in the absence of proof, for it is settled doctrine that discrimination must be proven or must appear from the very face of the legislative act. In *Pullman Co. v. Knott*, 235 U. S. 23, 25, Mr. Justice HOLMES said:

> "It is suggested that there is an arbitrary classification because the tax is confined to sleeping and parlor car companies and does not fall upon railroads operating their own sleeping and parlor cars. If otherwise this were a valid objection, as to which we need express no opinion, it is enough to say that a tax is not to be upset upon hypothetical and unreal possibilities, if it would be good upon the facts as they are. *Keokee Consolidated Coke Co. v. Taylor*, 234 U. S. 224. It does not appear that any railroad in Florida does operate its own sleeping or parlor cars, and the Attorney General of the State denies that such a case exists."

Compare *Wampler v. LeCompte*, 282 U. S. 172; *O'Gorman & Young v. Hartford Ins. Co.*, 282 U. S. 251, 257-8; *Columbus & Greenville Ry. Co. v. Miller*, 283 U. S. 96, 101; *Lawrence v. State Tax Commission*, 286 U. S. 276.

But even if discrimination had been proven, it is apparent from the foregoing discussion that the statute is not for that reason invalid. As has been seen, the power to discriminate unquestionably exists where a public benefit of sufficient magnitude is achieved by its exercise and this has been recognized by the Circuit Court of Appeals. It is only on the further assumption that the Act under consideration gives rise to no substantial public benefit that it has been declared to be invalid. This is evident from the language which has been quoted from

the opinion below. *It is the presence of "consideration" for the exemption which is the real point at issue in this case.*

The petitioner submits that the consideration is apparent, namely, the continued operation of a road expressly declared by the Legislature of Maryland to be "of the utmost importance for the welfare of the State and particularly the communities served by said railroad." (See Preamble of the Act of 1931). This was the avowed consideration in return for which the Legislature granted an exemption to be effective only *to the extent that* and *for so long as* the railroad property continued to be used for railroad purposes. (See text of Act.) And it is the presence of this "consideration" which distinguishes the present case from that of *Baltimore City v. Starr Church*, 106 Md. 281, 67 Atl. 261 [1907], so much relied upon below, where the Court of Appeals of Maryland overthrew an act of the General Assembly attempting to exempt a revenue producing wharf property which happened to be owned in its private capacity by a church.

The Circuit Court of Appeals undertakes to answer this contention by asserting that the continued operation of the Railroad could have been compelled without the grant of a tax exemption for the reason that the property of the Railroad had been "dedicated to the public use". This answer seems plainly inadequate. In the first place, whatever may be the legal obligation of the Railroad to continue operation, the law must bow to physical necessity. If the Railroad has no funds with which to pay for essential services and supplies, and can borrow none, then its operation must inevitably cease, unless perchance it is required to begin taking up its tracks and selling its cars!

But apart from physical necessity, the law does not impose upon the owners of the Railroad who, as the Circuit Court of Appeals justly observes, are in this instance, the bondholders and creditors, any such ruthless obligation. It is well settled that in the absence of contract, (and there is none shown in this case), the owners of a railroad cannot be compelled to continue operations at a loss. As was said by Mr. Justice VAN DEVANTER in *Railroad Comm. v. Eastern Texas R. R.*, 264 U. S. 79, 85:

> "To compel it to go on at a loss or to give up the salvage value would be to take its property without due process of law."

And see *Brooks-Scanlon Co. v. RR. Comm.*, 251 U. S. 396; *Bullock v. Florida*, 254 U. S. 513, 520; *Colorado v. U. S.*, 271 U. S. 153.

It may be argued that the Railroad, having accepted franchises from the respondent municipalities, is for that reason bound to continue operations. The franchise ordinances do not appear to impose any such requirements. Certainly the acceptance of the provisions of these ordinances could not create any obligation to continue operations beyond the borders of the respective municipalities. Moreover, the State has conferred upon its Public Service Commission power to relieve from such an obligation when it becomes unduly onerous. CODE OF PUBLIC GENERAL LAWS OF MARYLAND, BAGBY'S EDITION (1929 SUPPLEMENT), Art. 23, sec. 30; *Benson v. Public Service Commission*, 141 Md. 398, 118 Atl. 852 [1922]; *Railroad Commission v. Los Angeles R. R. Corp.*, 280 U. S. 145. Compare U. S. C. TIT. 49, CLAUSE 1 (18) (19); *Colorado v. U. S.*, 271 U. S. 153.

For these reasons it is submitted that the conclusion of the Circuit Court of Appeals that the exemption of the Railroad worked a discrimination against other railroad companies similarly situated contrary to the provisions of the 14th Amendment and of the Declaration of Rights of the State of Maryland, is plainly unsound, as is the attempted distinction between cases upholding a tax exemption to encourage the *construction* of a specific railroad and a case such as the present one where the purpose of the exemption is to encourage and make possible the *continued operation* of such a railroad. It is respectfully submitted that the reasoning so forcefully expressed in the opinion of the District Court should have controlled the determination of this question (R. 12-16).

C.

THE ACT IS NOT A SPECIAL LAW FOR A CASE FOR WHICH PROVISION HAS BEEN MADE BY AN EXISTING GENERAL LAW OF THE STATE OF MARYLAND, NOR DOES IT RELEASE THE RAILROAD FROM ANY DEBT OR OBLIGATION TO THE STATE.

Beyond the arguments which have been considered based upon the Fourteenth Amendment and the Maryland Declaration of Rights, the Circuit Court of Appeals placed reliance upon the contention that the Act of 1931 was a special law for a case for which provision has been made by an existing general law and was therefore invalid under Article III, Section 33 of the Maryland Constitution.

To this we reply that there is no general law dealing with the subject matter of this legislation. Nor does the constitution prohibit the enactment of legislation for special cases. In *Mayor and City Council of Baltimore*

v. United Railways Company, 126 Md. 39, 94 Atl. 378 [1915], it was claimed that an act of the General Assembly giving effect to an agreement between the Mayor and City Council of Baltimore and the United Railways Company, which concerned among other things, an exemption from taxation which had been granted the United Railways Company, was a special law within the meaning of the constitutional provision under consideration. In answer to this contention the Court said (p. 54) (italics ours):

> "*There is a wide difference between a special Act, within the meaning of the Constitution, and an act for special purposes.* There was no general law by which the City could condemn the roads, etc., of the appellee in the Annex and not pay for their full value, including the franchises and all other rights. It could not under any General Law have made such arrangements as it did make. • • •
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> "*Over and over again has the Legislature granted special powers to corporations which were incorporated under the General Laws and in many such cases no question was or could have been properly raised as to the validity of the legislation.* As municipal corporations can only be chartered by special Acts of the Legislature, there is much more reason for sustaining such legislation as is now before us than that affecting private corporations, and as we have already said this Act was unquestionably primarily intended for the benefit of the City. If this Act had simply authorized the City to enter into a contract with the railway company on such terms as it did make with it there would have been no reason to attack the Act on this constitutional ground, for surely the Legislature had that right, and that is the effect of the Act. Some of the cases in this State, while not conclusive, or wholly in point, go far to sustain the conclusion we have reached. In *Pumphrey v. Baltimore,* 47 Md. 145, the Act of 1876 (Ch. 220)

then under consideration required the City to acquire the bridge in controversy. It was objected to as obnoxious to Section 33 of Article 3 of the Constitution, but the Court said: 'In the public local laws relating to Baltimore City no provision is made for the acquisition of the bridge in question, and the ascertainment of the amount to be paid to the owners in the manner contemplated and directed by the Acts, etc.' In *Hodges v. Baltimore Pass. R'y. Co.*, 58 Md. 603, the Act gave the company certain privileges not given by the general laws. The Court said in reference to the objection that it was contrary to this provision of the Constitution: 'This assumes that provision has been made by a general existing law conferring on the defendant corporation the privileges claimed under the Act of 1882,' and then went on to show it had not been. In *Revell v. Mayor, etc. of Annapolis*, 81 Md. 1, the Act provided for the erection of a public school building in Annapolis, and authorized and directed the School Commissioners to borrow money on bonds to be endorsed by the County Commissioners and directed the City of Annapolis to issue bonds to help to pay for it. The Court said it was true the general law provided that the School Commissioners should have control and supervision over the public schools with power to build, repair and furnish school houses, but as it did not authorize the Commissioners to borrow money upon bonds to be endorsed by the County Commissioners for such purpose, nor for the apportionment of the cost between the county and the city, it could only be done by special act. Other cases might be cited by way of illustration but we will not do so.''

This adjudicates the precise point under discussion and makes clear that an act *for a special purpose is not necessarily a special law* within the meaning of the constitutional provision. As the court points out, the General Assembly has repeatedly without question dealt with

special situations relating to particular public and private corporations by separate enactments. It is obvious that circumstances may arise which justify distinct consideration with regard to some particular corporation which remove the case entirely from the purview of any general law, and it would be an unwarranted limitation upon legislative power to say that special cases of this kind cannot be dealt with as they arise. The contention we are examining after all comes to this, that because there is a general law levying taxes upon railroad corporations, the General Assembly cannot for reasons which seem to it sound, relieve a railroad which is not paying operating expenses and is in the hands of a receiver, from taxation upon its railroad property with the hope that it may thereby be enabled to continue to render transportation service to the various communities through which the road is constructed. Much may be said for the wisdom of the policy of dealing with such cases upon the merits of each rather than for the General Assembly to undertake to deal by general enactment with the whole subject matter.

It is conceivable that the General Assembly might pass a general law providing that whenever any railroad company ceases to earn its operating expenses and is in the hands of a receiver, it shall during such period be entitled to an exemption from taxation, but there is nothing in the Constitution which prevents the General Assembly from reserving to itself the right to examine into the merits of each case and to grant or withhold the exemption as its judgment may dictate. Compare *McHenry v. Alford*, 168 U. S. 651.

It is a mistake, it is submitted, to regard the Act of 1931 as anything in the nature of private or special legislation for the benefit of a particular corporation. The welfare of many thousands of citizens in at least two counties and in the City of Baltimore would have been immediately affected by the suspension of operation of a railroad connecting Baltimore, Washington and Annapolis. The Washington, Baltimore and Annapolis Electric Railroad Company is the only interurban road in Anne Arundel County and in a large portion of Prince George's County. To deprive over three million and a quarter of passengers a year of transportation service would have been a very serious public inconvenience. It would seem an abuse of terms to call an act dealing with so large a part of the territory of the State, as well as to many people, a special law when it would never be suggested that the amendment of the charter of a village containing one hundred and fifty people would be such.

Conclusive as is the decision and language of the Court of Appeals in the case of *Mayor and City Council of Baltimore v. United Railways Company,* the contention here made is also abundantly fortified by other decisions of that Court.

In *Police Pension Cases,* 131 Md. 315, 101 Atl. 786 [1917], it was contended that an act granting a pension to an employe of the Board of Police Commissioners who did not come within the provisions of the existing law granting pensions to such employes was a special law and invalid under the provision of the Constitution under discussion. In rejecting this contention the Court used this language (p. 322) (italics ours):

> *"It is true that there are a number of sections in the Charter which relate to pensions for policemen and others, but they are only allowed on certain conditions.* If a worthy person does not come within those provisions, it cannot be properly said that an Act can not be passed to provide for his or her case, any more than it can be successfully contended that the great amount of legislation which has been passed conferring special powers on corporations which were not granted by the general laws are invalid. That has been done over and over again, without a suggestion that they were not valid. The General Corporation Laws of 1868 provided that, 'No corporation shall possess or exercise any corporate powers except such as are conferred by law, and such as shall be necessary to the exercise of the powers so acquired.' Art. 23, Sec. 56 of Code of 1888; Sec. 64 of Code of 1904. And it was oftentimes exceedingly doubtful whether a corporation had under the general laws some special power it desired to exercise, and hence numerous acts were passed to confer such powers. Section 756 and 777 empower but do not require the Board to retire those provided for in them. It would be carrying the meaning of section 33 of Article 3 of the Constitution very far to say that by reason of such sections the Legislature could not pass an Act requiring the Board to retire on pay a certain person or persons which the Legislature thought should be retired. *The Legislature never intended to abandon all control over the Board in such matters, as is shown by the many statutes on the subject. Of course when there is a general statute covering the particular case another question may arise, but we are satisfied that there is no difficulty in this case."*

There is a brief statement in the opinion below that the act in question is a special law within the meaning of that provision of Section 33 of Article 3 prohibiting the General Assembly from "releasing persons from their debts or obligations to the State unless recommended by

the governor or officers of the Treasury Department." The provision can not operate on taxes which are payable to the municipalities as these are in no sense "obligations to the State." Moreover, it is submitted that the Act cannot possibly be regarded as one releasing the Railroad from any debt or obligation to the State. When the exact nature of the General Assembly's action is examined, any possible doubt as to its perfect competence to enact it will disappear.

Regardless of whether all of the elements of a binding legal contract existed, it is clear that the challenged legislation involved a bargain. The General Assembly exempted so much of the property of the Railroad as might be used for railroad purposes during such part of the period of two years as that use should continue. If the General Assembly believed that the public welfare demanded the continued operation of the Railroad, it was clearly within its power to bring this about by offering the exemption in return for the continued operation.

There is not involved here, primarily at any rate, any question of the constitutional sanctity of a contract made by the State with a corporation. The case does not differ, however, in any of its material aspects from those cited in the first part of this brief holding that where an offer of a tax exemption has been made to a corporation if it does a particular thing, such as constructing a railroad or a charitable institution, and the offer is accepted in accordance with its terms, a binding contract results. There can be no possible difference between granting an exemption to a railroad whose continued operation is seriously threatened and granting an exemption for the purpose of bringing about the construction of a railroad

in the first instance. Both present situations directly related to the public welfare and the General Assembly has the power to make the offer in the one case as well as in the other. The consideration which it receives in the instant case is just as definite and tangible as in any other; the continued operation of an existing railroad is clearly just as much the object of legislative encouragement as the construction of the road originally.

This view of the Act, it is submitted, removes it from any possible attack upon its validity and brings it squarely within the long recognized power of a legislative body to grant exemptions to railroad companies among other corporations where it believes the public interest to be subserved thereby.

It scarcely seems necessary to dwell at any length on the case of *Baltimore City v. Starr Church,* 106 Md. 281, in which the Court of Appeals held invalid a special act of the General Assembly granting an exemption from taxation to the wharf property of a particular church. In no conceivable way could this be said to have any basis in public policy. The property exempted was revenue producing property, held by the church as a private corporation, and it had no more right to exemption from taxation for its property than any property held by any other religious organization. Furthermore, the General Assembly had already exempted *by general law* the property of religious bodies used for the purposes of worship, and the attempted grant to the Starr Church amounted simply to the granting of a special privilege to it which no other religious body enjoyed.

It has already been pointed out but should be repeated, that a railroad serving so large and important a portion of the State as the railroad in question can never be regarded simply as a private enterprise so far as legislation is concerned. It was the people using the railroad that the General Assembly had in mind, of course, in passing the Act in question and not its owners. It would seem to be a perversion of the true meaning of terms to say that an act regulating the date for shooting rabbits in Anne Arundel County is a valid law, while one affecting in a very important particular the daily life of many thousands of people in that county and in other parts of the State is invalid because a special law.

D.

THE ACT EXEMPTS THE RAILROAD FROM PAYMENT OF FRANCHISE TAX TO THE MUNICIPALITIES AND SO CONSTRUED IS NOT A LAW EMBRACING MORE THAN ONE SUBJECT WITHIN THE MEANING OF ARTICLE III, SECTION 29, NOR A LOCAL LAW WITHIN THE MEANING OF ARTICLE XI-A OF THE MARYLAND CONSTITUTION.

The Act of 1931 exempts "the railroad property of the Washington, Baltimore and Annapolis Electric Railroad Company from all States taxes and charges including contributions to the cost of construction of railroad crossings made or to be made under the authority of the State Roads Commission, and from all county and city taxes and *charges in the nature of a tax* for the years during which the property is so used." The Circuit Court of Appeals held that the Act did not apply to the franchise taxes accruing under the ordinances of the cities of Baltimore and Annapolis, which have been heretofore cited. This conclusion rests upon the assumption that the sums payable to the municipalities under these ordinances are

not "taxes nor charges in the nature of taxes" and that in any event they are not taxes on railroad property.

This, it is respectfully submitted, is a misapprehension of the nature of the charges imposed by these ordinances. While of course a statute granting exemption from taxation must be strictly construed, it is obvious that the special inclusion of "charges in the nature of a tax," expressly indicates the intention of the Legislature to extend the exemption so as to include charges not ordinarily classified as taxes.

Whatever may be the nature of franchise taxes generally, the ordinances of the cities of Baltimore and Annapolis cannot be considered abstractly but must be interpreted in the light of previous history. These taxes, colloquially referred to as "Park Taxes", are virtually identical with the "Park Tax" imposed upon the United Railways & Electric Company of Baltimore City by an ordinance of the City of Baltimore, the effect of which was fully considered by the Court of Appeals of Maryland in *United Railways Company v. Baltimore City*, 111 Md. 264, 73 Atl. 633 [1909]. The opinion in that case demonstrates that in Maryland, the rights flowing from these ordinances are not considered merely as privileges or franchises, but as easements, subject to valuation and assessment for purposes of taxation in the same manner as other intangible property *and that the charges accruing under these ordinances are in lieu of all property taxes on such easements.* The Court said (p. 270):

> "* * * we think the gross receipts tax [Park Tax] was never intended as a commutation tax in the sense that term is employed by the solicitors for the City, but as a tax upon the corporation itself, measured by the amount of business which it does from

year to year, and intended as a substitute for a direct tax upon all of appellant's intangible property." * * *

(P. 271) "We hold, therefore, that as to the easements enjoyed by the appellant in the streets of Baltimore City upon which the Park Tax is earned and paid, no further assessment thereon for the purpose of taxation can be lawfully made without express legislative authority * * *."

Thus it will be seen that the nature of this charge has been conclusively established by the opinion of the highest court of the State of Maryland, which has never been overruled. No matter whether the Circuit Court of Appeals agreed with the reasoning of that case, it should have been accepted as controlling. Compare *Commissioners of Wicomico County v. Bancroft*, 203 U. S. 112. This renders it unnecessary to discuss the arguments advanced by the Circuit Court of Appeals on this point.

The Court below intimates that the Act of 1931, if construed to exempt the Railroad from payment of the charges accruing under the ordinances in question, is violative of Article III, Section 29 of the Maryland Constitution, requiring that an Act shall embrace but one subject. It is apparent that the Court gave no extended consideration to this question, deeming it unnecessary to the decision. Had it done so it could not have escaped the conclusion that this provision of the Maryland Constitution as construed by repeated decisions of the highest court of that State, could have no application to a case such as the present. Thus in *Baltimore v. Reitz*, 50 Md. 574, 579 [1879], it was said that if the several sections of the law "refer to and are germane to the same subject-matter, which is described in its title, it is considered as embracing but a single subject, and as satisfying the requirements of the Constitution in this re-

spect." The Constitution has been held to permit the repeal and re-enactment with amendments of entire articles of the Code in one bill. *State v. Applegarth*, 81 Md. 293, 303, 31 Atl. 961 [1895].

The suggestion that the statute as construed by the petitioner violates "the spirit if not the letter" of Article XI-A of the Constitution of the State of Maryland, need not provoke discussion. We have heretofore quoted Section 4 of Article XI-A which plainly shows that that provision of the Constitution has no application to legislation affecting more than one geographical sub-division of the State.

CONCLUSION.

If we have understood the decisions of this Court correctly, the decision of this case must rest upon the proper construction of the Declaration of Rights and the Constitution of the State of Maryland. It is significant that the District Court found little difficulty in disposing of the contention that the Act of 1931 violated these provisions. Surely the conclusions of a Maryland lawyer on a point of Maryland law are entitled to great weight, for as this Court has observed: "To one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have gotten from the books." *Diaz v. Gonzalez*, 261 U. S. 102, 106.

Respectfully submitted,

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